IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Bail Appl..No. 3883 of 2007()

CRIME 187/07 OF PEERMADE POLICE STATION

PETITIONERS

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1. BABU, AGED 27 YEARS, S/O. SUBRAMANIAN,
LAYAM NO.I DIVISION, KUZHIKANAM, ELAPPARA P.O.

2. BINSS, AGED 21 YEARS, S/O. JAYAKODI
LAYAM II DIVISION, KOZHIKANAM, ELAPPARA VILLAGE.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENTS: COMPLAINANT

STATION HOUSE OFFICER,
PEERUMADE POLICE STATION, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/06/2007, ALONG WITH BA NO. 3905 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 3883, 3905 &
3930 of 2007

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Dated this the 29th day of June, 2007

O R D E R

Application for anticipatory bail. The petitioners, who are accused Nos. 19, 20, 23, 24, 27 and 28, as also two persons apprehend that they may be arrayed as accused and arrested. The crux of the allegations is that when a police party reached the scene on information that two groups were indulging in culpable overt acts against each other, the miscreants attacked the police. The police party took shelter in the house of a local Panchayat Member. The miscreants allegedly trespassed into such house also. The alleged incident took place on 3.6.2007 at 9.30 p.m. Allegations are raised not only under Sections 332 and 452 as also under Section 308 I.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Some of them merely happened to be present at the scene of the crime and they did not have any common object with any others. In these circumstances allegations

are raised against the petitioners without any substance. At any rate, the counsel submits that the allegation under Section 308 I.P.C. is raised with the sole intention of vexing and harassing the petitioner and in an attempt to oust the jurisdiction of the learned Magistrate to grant bail. In any view, the allegation under Section 308 I.P.C. is unjustified, it is submitted.

3. The learned Prosecutor opposes the application. He submits that the allegations are serious. The policemen, who went on law and order duty, were attacked without any justification by the accused with culpable intention. At any rate, this is not a case where directions under Section 438 Cr.P.C. can or ought to be issued in favour of the petitioners, he submits.

4. An allegation is seen raised under Section 308 I.P.C. also. The learned Prosecutor was requested to explain the nature of the circumstances that justifies the allegation under Section 308 I.P.C. This was so done because the petitioners have a specific contention that merely because policemen are the victims an unjustifiable allegation under Section 308 I.P.C. has been raised by the police.

5. The injured persons are shown to have suffered only very simple injuries. In the totality of facts and circumstances I find no justification for the allegation under Section 308 I.P.C. raised against the accused persons.

I am satisfied that, though there is no justification in the prayer for grant of anticipatory bail by invoking the extra ordinary equitable discretion under Section 438 Cr.P.C., this is a fit case where the petitioners can be permitted to appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail in the normal and regular course. When they are arrested and their application for release on bail is considered, it shall be reckoned that there is no allegation raised under Section 308 I.P.C. The prayer for bail shall be disposed of considering that the allegations do not include an allegation under Section 308 I.P.C.

6. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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